Supreme Court, U.S.
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No. 99-1592

In The
Supreme Court Of The United States
October Term, 1999

EVANDRO S. SANTINI, ET AL.,
Petitioners,

v.

CONNECTICUT HAZARDOUS WASTE MANAGEMENT SERVICE,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPPOSITION TO WRIT OF CERTIORARI

The Connecticut Hazardous Waste Management Service hereby objects to the petition for a writ of certiorari filed by Evandro S. Santini and Santini Homes, Inc.

JURISDICTIONAL STATEMENT

Petitioners seek to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(a) but jurisdiction does not exist under this statute to review this matter.

STATEMENT OF THE CASE

On June 10, 1991 the Connecticut Hazardous Waste Management Service ("Respondent" or "CHWMS") announced that three parcels of land in and around Ellington, Connecticut were being considered for a potential disposal facility for low-level radioactive waste. One of the sites included land owned by Evandro S. Santini and Santini Homes, Inc. (hereinafter collectively known as the "Petitioners" or "Santini"). Petitioners sued claiming that the announcement constituted a temporary taking of their property under Article First, Section 11 of the Connecticut Constitution.

After a trial on the merits, judgment was rendered in favor of the Respondent. *Id.* at 51a. The trial court held as a matter of law that the Service had engaged only in planning and preparatory activities which did not amount to a taking under Connecticut law. *Id.* at 42a. Furthermore, the trial court found that, as a matter of fact, even if the Service's activities went beyond planning, a taking did not occur because the Petitioners retained use and value in their property. *Id.*

Petitioners appealed to the Connecticut Appellate Court. The Connecticut Supreme Court, however, granted a direct appeal and upheld the trial court. *Id.* at 27a.

The Petitioners now seek review before this Court.

SUMMARY OF THE ARGUMENT

This petition for certiorari should be denied because 1) the Complaint and the decision below were based solely on state law and therefore there is no federal question within the meaning of 28 U.S.C. § 1257; and 2) the petitioners' claims are based entirely on a view of the facts that has already been rejected by the trial and appellate courts below.

ARGUMENTS

A. The Decision Was Based On State Law.

The relevant statute, 28 U.S.C. §1257, permits a writ of certiorari if, *inter alia*, a state supreme court has decided erroneously a question of a right protected by the United States Constitution. Similarly, Rule 10 of this Court requires that a party seeking a writ of certiorari demonstrate the existence of a substantial question of federal law. No such question exists here for the reason that this case was decided under the terms of the Connecticut Constitution.

Petitioners original complaint seeks redress for "inverse condemnation without just compensation, in violation of Article I, § 11 of the Connecticut Constitution ...." No mention of a claim under the United States Constitution is ever made. Consequently, the Connecticut Supreme Court stated that the "dispositive issue in this appeal is whether mere governmental planning may constitute a taking ... under Article first, § 11 of the Connecticut Constitution." Furthermore, the decision adds that "[t]he

plaintiffs brought their claim of inverse condemnation solely under the Connecticut constitution and, therefore, we limit our analysis to that provision." Pet. App. at 18a.

For many years this Court has held to the position that :

> The principle that we will not review judgments of state courts that rest on adequate and independent state grounds is based, in part, "on the limitations of our own jurisdiction."

Michigan v. Long, 463 U.S. 1032, 1041-1042 (1983). In this case, because of the plaintiffs' determination to bring this case on state constitutional grounds, the Connecticut Supreme Court has not addressed a question of federal law, but a question of the interpretation of Connecticut Constitution. Thus, no reason exists for this Court to review this case.[1/]

1/ Because this case was presented and decided solely under Connecticut law, petitioners' assertion that the Connecticut Supreme Court ignored controlling federal law is irrelevant. Nevertheless, it is also incorrect. As the Connecticut Supreme Court explained: "In the plaintiffs' view . . . when the United States constitution is interpreted to grant rights thereunder, our state constitution must be interpreted to grant at least the same level of protection as that granted by the federal constitution. What is meant by that doctrine, however, is irrelevant in this case. None of the parties argues that our state constitution provides different protection for property owners from that afforded by the federal constitution. Furthermore, we are not aware of any doctrine, cases or reason that would compel, in the context of this case, the treatment of the plaintiffs' state constitutional claims different than the treatment those claims would have been given had we been adjudicating the plaintiffs' claims under the federal constitutional takings jurisprudence. We, therefore, assume for the purposes of this appeal that article first, § 11, of our state constitution affords the same protection as that provided under its

B. Petitioners' Factual Claims Have Been Rejected By Each Court Below.

In their brief, Petitioners make numerous statements that could lead one to believe that the June 10, 1991 announcement caused them to lose all use and value in their land. For example, Petitioners use phrases like "economically idled" and that the subject property was left "without economic use." It is based upon this slanted and mistaken view of the facts that Plaintiffs then claim that a taking occurred.

To the contrary, each court below has found that the petitioners did not lose all use and value in their property and that a taking did not occur.

Specifically, the trial court found that the announcement of siting consideration was made on June 10, 1991 but that for a two year period preceding the announcement Santini was unable to sell homes in the Ellridge Estates subdivision due to the regional economic downturn. *Id.* at 42a. The announcement itself did not take, or announce an intent to take any property, but only identified three potential sites for further study. *Id.* at 15a. In fact, during the announcement period, the Petitioners began negotiations for the sale of one of the houses, which sale closed on August 11, 1992 for $530,000. Furthermore, in the middle of the siting announcement period, one buyer approached the Petitioners seeking to purchase a home for a sum in the mid-$300,000 range; essentially the same value as given for this home by two different appraisers. *Id.*[2/] It is not

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federal counterpart. " Pet. App. 18a n. 20.

[2/] The Petitioners' Brief suggests that this fact is of no consequence because there was "no meeting of the minds." Pet. Brief p. 29 n 20. The fact that the parties did not agree to a final price is of no

surprising, therefore, that expert appraisal witnesses testified at trial that the land had use and value and, based on this testimony, the trial court concluded that, "both [properties] did have use and value after the notice."[3/]

Finally, the majority of the Connecticut Supreme Court reviewed the record and said:

> [t]he trial court made a critical factual finding adverse to the plaintiffs' claims, namely, that they had not met their burden of proving that the siting announcement deprived their properties of all economically viable use during the period in which they claimed a temporary taking. *Our thorough review of the record indicates that this finding, as well as other critical factual findings adverse to the plaintiffs' claims, are fully supported by the record.*

Pet. App. 17a-18a n.19. (Emphasis added). These "critical factual findings adverse to the plaintiffs' claims" not only helped determine the result below, but make this case utterly unworthy of this Court's consideration.

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consequence. What is of relevance is that at the time when the Petitioners are claiming that their property had no value, a disinterested buyer was offering a substantial sum for a house which had failed to sell for up to two years before the Service's announcement.

3/ Page 7 of Petitioners' Brief states that "all of the expert and fact witnesses agreed that in the wake of the June 1991 announcement, Santini could not generate *any* revenue from his land . . . ." This is not true. As the trial court found: "None of the experts said plaintiffs' land had no economic or productive use except one expert said that the Ellridge had no agricultural value. . . ." (Pet. App. 47a.)

In short, notwithstanding the Petitioners attempt to change the underlying facts in this case to suit their ends, the trial court and the majority of the Connecticut Supreme Court agree that the record supports but one conclusion--that Petitioners retained both use and value in their land.

CONCLUSION

The case before this Court is ill-suited for review for two reasons. The first is that the decision of the Connecticut Supreme Court is based entirely upon Connecticut law. The second point is that the conclusions of law the Petitioners attempt to raise are based on a view of the facts that has twice before been rejected by courts below.

For these reasons, therefore, the Respondent requests that a writ of certiorari be denied.

Respectfully submitted,

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